

AO 120 (Rev.3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
---	---

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO. 06cv2305-LAB(BLM)	DATE FILED 10/16/06	U.S. DISTRICT COURT United States District Court, Southern District of California
PLAINTIFF Thomson Instrument Co., et al		DEFENDANT Biotage AB
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see attached complaint		see attached complaint
2 6,294,087		
3 6,436,284		
4 6,802,968		
5		

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading			
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK		
1				
2				
3				
4				
5				

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT <i>attached</i>		
CLERK	(BY) DEPUTY CLERK <i>A Garcia</i>	DATE <i>8/10/07</i>

Copy 1 - Upon initiation of action, mail this copy to Director

Copy 2 - Upon filing document adding patent(s), mail this copy to Director

Copy 3 - Upon termination of action, mail this copy to Director

Copy 4 - Case file copy

1 (b) the claimed invention of the '968 patent was patented or described in a
2 printed publication in this or a foreign country or in public use or on sale in this country, more
3 than one year prior to the date of the application for patent in the United States;

4 (c) the applicant himself did not invent the subject matter sought to be
5 patented in the '968 patent;

6 (d) the subject matter sought to be patented in the '968 patent and the prior art
7 are such that the subject matter as a whole claimed in the '968 patent was obvious at the time the
8 invention was made to a person having ordinary skill in the art to which said subject matter
9 pertains; and

10 (e) the specification of the '968 patent fails to contain a written description of
11 the invention, and/or the manner and process of making and using it, in such full, clear, concise,
12 and exact terms as to enable any person skilled in the art to which it pertains, or with which it is
13 most nearly connected, to make and use the same, and/or fails to set forth the best mode
14 contemplated by the inventor of carrying out his invention.

15 **XI.**

16 **SEVENTH CLAIM FOR RELIEF**

17 **(DECLARATION OF UNENFORCEABILITY OF '284 PATENT)**

18 53. Thomson and SPP reallege paragraphs 1 through 33.

19 54. Moreover, Thomson and SPP allege that each of the claims of the '284 patent is
20 unenforceable due to inequitable conduct by the applicants and/or their attorneys in prosecution
21 of the application before the United States Patent and Trademark Office ("USPTO"), in violation
22 of the duties imposed by 37 C.F.R. § 1.56 ("Rule 56"). Specifically, but without limitation:

23 55. The application for the '284 patent, U.S. Patent Application No. 09/687,801 (the
24 "'801 Application") was filed on October 13, 2000 as a continuation-in-part of application
25 No. 09/137,019, now U.S. Patent No. 6,132,605.

26 ///

27 ///

28 ///

1 56. The applicants for the '801 Application and their prosecuting attorneys, and every
2 other person who was substantively involved in the preparation and prosecution of
3 '801 Application had a duty of candor and good faith, including a duty to disclose all material
4 prior art, in dealing with the USPTO in the prosecution of the '801 Application.

5 57. More than one year prior to the filing of the '801 Application, Patent Cooperation
6 Treaty Application No. PCT/US98/23935 published, on May 20, 1999 (the "PCT Publication").
7 A true and correct copy of the PCT Publication is attached hereto as Exhibit E.

8 58. On information and belief, the applicants for the '801 Application and their
9 attorneys were aware of the existence and publication of the PCT Publication as of the date of its
10 publication, May 20, 1999.

11 59. The PCT Publication is material in that it anticipated and/or rendered obvious one
12 or more claims of the '801 Application as originally filed, and anticipated and/or rendered
13 obvious one or more claims of the '284 patent as issued on August 2, 2002, either alone or in
14 combination with additional prior art references or acts.

15 60. The PCT Publication was a material reference to the patentability of the
16 '801 Application, as defined in 37 C.F.R. § 1.56(b) in effect during the pendency of the
17 application, and accordingly should have been disclosed to the USPTO examiner during the
18 pendency of the '801 Application, pursuant to Rule 56.

19 61. At no time did the applicants or their attorneys submit the PCT Publication.

20 62. Upon information and belief, the USPTO relied upon the acts and omissions
21 recited above in paragraphs 53 through 60, and was thereby persuaded to improperly allow the
22 '801 Application to issue as the '284 patent. Such acts, omissions and/or misrepresentations were
23 material.

24 63. Applicants and/or one or more of their patent prosecution attorneys breached their
25 duties of candor and disclosure owed to the USPTO during the prosecution of the
26 '801 Application for each of the material acts, omissions and/or misrepresentations recited above
27 in paragraphs 53 through 60.

28 ///

64. Upon information and belief, these breaches of duty by applicants and their patent prosecution attorneys were committed with an intent to deceive and/or mislead the examiners assigned to the '801 Application. Such intent to deceive and/or mislead is evinced by the acts, omissions and/or misrepresentations cited above in paragraphs 53 through 60, individually and from the pattern arising from the totality of circumstances they establish.

65. As a result of the acts and omissions stated above, the '284 patent is unenforceable due to inequitable conduct of the inventors, their attorneys and/or agents.

66. Upon information and belief, the '284 patent is unenforceable due to inequitable conduct. Thomson and SPP reserve the right to amend their complaint to allege additional instances of inequitable conduct as further information is uncovered.

67. Thomson and SPP desire and request a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited in paragraphs 1 through 65 above. Such a determination and declaration are necessary and appropriate at this time so the parties may ascertain their respective rights and duties regarding the non-infringement, unenforceability and invalidity of the '284 patent.

XII.

EIGHTH CLAIM FOR RELIEF

(DECLARATION OF UNENFORCEABILITY OF '968 PATENT)

68. Thomson and SPP reallege paragraphs 1 through 33, and 53 through 66.

69. Moreover, Thomson and SPP allege that each of the claims of the '968 patent is unenforceable due to inequitable conduct by the applicants and/or their attorneys in prosecution of the application before the USPTO, in violation of the duties imposed Rule 56. Specifically, but without limitation:

70. The application for the '968 patent, U.S. Patent Application No. 10/172,466 (the "'466 Application") was filed on June 14, 2002 as a continuation of the '801 Application, now U.S. Patent No. 6,436,284.

71. The applicants for the '466 Application and their prosecuting attorneys, and every other person who was substantively involved in the preparation and prosecution of

1 '466 Application had a duty of candor and good faith, including a duty to disclose all material
2 prior art, in dealing with the USPTO in the prosecution of the '466 Application.

3 72. More than one year prior to the filing of the '466 Application and the
4 '801 Application, Patent Cooperation Treaty Application No. PCT/US98/23935 published, on
5 May 20, 1999 (the "PCT Publication").

6 73. On information and belief, the applicants for the '466 Application and their
7 attorneys were aware of the existence and publication of the PCT Publication as of the date of its
8 publication, May 20, 1999.

9 74. The PCT Publication is material in that it anticipated and/or rendered obvious one
10 or more claims of the '466 Application as originally filed, and anticipated and/or rendered
11 obvious one or more claims of the '968 patent as issued on October 12, 2004, either alone or in
12 combination with additional prior art references or acts.

13 75. The PCT Publication was a material reference to the patentability of the
14 '466 Application, as defined in 37 C.F.R. § 1.56(b) in effect during the pendency of the
15 application, and accordingly should have been disclosed to the USPTO examiner during the
16 pendency of the '466 Application, pursuant to Rule 56.

17 76. At no time did the applicants or their attorneys submit the PCT Publication.

18 77. Upon information and belief, the USPTO relied upon the acts and omissions
19 recited above in paragraphs 68 through 75, and was thereby persuaded to improperly allow the
20 '466 Application to issue as the '968 patent. Such acts, omissions and/or misrepresentations were
21 material.

22 78. Applicants and/or one or more of their patent prosecution attorneys breached their
23 duties of candor and disclosure owed to the USPTO during the prosecution of the
24 '466 Application for each of the material acts, omissions and/or misrepresentations recited above
25 in paragraphs 68 through 75.

26 79. Upon information and belief, these breaches of duty by applicants and their patent
27 prosecution attorneys were committed with an intent to deceive and/or mislead the examiners
28 assigned to the '466 Application. Such intent to deceive and/or mislead is evinced by the acts,

1 omissions and/or misrepresentations cited above in paragraphs 68 through 75, individually and
2 from the pattern arising from the totality of circumstances they establish.

3 80. As a result of the acts and omissions stated above, the '968 patent is unenforceable
4 due to inequitable conduct of the inventors, their attorneys and/or agents.

5 81. Upon information and belief, the '968 patent is unenforceable due to inequitable
6 conduct. Thomson and SPP reserve the right to amend their complaint to allege additional
7 instances of inequitable conduct as further information is uncovered.

8 82. Thomson and SPP desire and request a judicial determination and declaration of
9 the respective rights and duties of the parties based on the disputes recited in paragraphs
10 1 through 80 above. Such a determination and declaration are necessary and appropriate at this
11 time so the parties may ascertain their respective rights and duties regarding the non-
12 infringement, unenforceability and invalidity of the '968 patent.

13 **XIII.**

14 **PRAYER**

15 **WHEREFORE, Thomson and SPP pray for:**

16 **1. Declarations that:**

17 **A. The '087 patent, and each and every claim thereof, is invalid;**

18 **B. Thomson and SPP have not infringed or induced infringement of**
19 **'087 patent, nor have they contributed to any alleged infringement thereof by others.**

20 **C. The '284 patent, and each and every claim thereof, is invalid;**

21 **D. Thomson and SPP have not infringed or induced infringement of**
22 **'284 patent, nor have they contributed to any alleged infringement thereof by others.**

23 **E. The '968 patent, and each and every claim thereof, is invalid;**

24 **F. Thomson and SPP have not infringed or induced infringement of**
25 **'968 patent, nor have they contributed to any alleged infringement thereof by others;**

26 **G. The '284 patent, and each and every claim thereof, is unenforceable; and**

27 **H. The '968 patent, and each and every claim thereof, is unenforceable.**

28 **///**

1 2. A finding that this case is exceptional pursuant to 35 U.S.C. § 285, and award to
2 Thomson and SPP their costs, expenses, and reasonable attorneys' fees; and

3 3. Such other and further relief, in law or equity, as the Court deems just and proper.

4 Dated: October 16, 2006

5 DLA PIPER US LLP

6
7 By


ARTHUR A. WELLMAN, JR.

Attorneys for Plaintiffs

THOMSON INSTRUMENT CO.; and
SCIENTIFIC PLASTIC PRODUCTS, INC.

DEMAND FOR JURY TRIAL

Plaintiffs THOMSON INSTRUMENT CO. and SCIENTIFIC PLASTIC PRODUCTS, INC. hereby respectfully demand a jury trial of all issues properly triable before a jury.

Dated: October 16, 2006

DLA PIPER US LLP

By



ARTHUR A. WELLMAN, JR.

Attorneys for Plaintiffs

THOMSON INSTRUMENT CO.; and
SCIENTIFIC PLASTIC PRODUCTS, INC.

FILED

07 JUL 31 AM 8:56

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

POC

DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THOMSON INSTRUMENT CO., a
Nevada corporation; and SCIENTIFIC
PLASTIC PRODUCTS, INC., a California
corporation,

Plaintiffs,

v.

BIOTAGE AB, a Swedish corporation,

Defendant.

And Related Counterclaim.

Case No. 06 cv 2305 BTM (BLM)

**JOINT STIPULATION AND
[PROPOSED] ORDER TO DISMISS ALL CLAIMS AND
COUNTERCLAIMS WITH PREJUDICE
PURSUANT TO SETTLEMENT
AGREEMENT**

Plaintiffs and Counterclaim Defendants Thomson Instrument Co. ("Thomson") and
Scientific Plastic Products, Inc. ("SPP") and Defendants and Counterclaim Plaintiffs Biotage AB
("Biotage") have reached a settlement of the above-captioned action.

Pursuant to the parties' settlement agreement and Federal Rules of Civil Procedure
41(a)(1) and 41(c), the parties hereby stipulate to the dismissal with prejudice of this Action, Case
No. 06cv2305 BTM (BLM), as follows:

1. All asserted claims and counterclaims that are pending in the above-captioned
action, Case No. 06cv2305 BTM (BLM), should be dismissed with prejudice.

///

-1-

SD-1750308 1
353971-2

Joint Stip. and [Proposed] Order to Dismiss All
Claims and Counterclaims with Prejudice Pursuant to Settlement Agmt.
06cv2305 BTM (BLM)

2. Each of the parties will bear its own attorneys' fees, costs, and other expenses incurred in the above-captioned action to date.

IT IS SO STIPULATED.

Respectfully submitted on July 24 2007,

FOLEY & LARDNER LLP

DLA PIPER US LLP

By: s/Debra D. Nye
DEBRA D. NYE
dnye@foley.com
Attorneys for Defendant and
Counterclaim Plaintiff
BIOTAGE AB

By: s/Arthur A. Wellman, Jr.
ARTHUR A. WELLMAN, JR.
Attorneys for Plaintiffs and
Counterclaim Defendants
THOMSON INSTRUMENT CO.; and
SCIENTIFIC PLASTIC PRODUCTS, INC.

ORDER

1. All asserted claims and counterclaims that are pending in the above-captioned action, Case No. 06cv2305 BTM (BLM), are hereby dismissed with prejudice.

2. Each of the parties will bear its own attorneys' fees, costs, and other expenses incurred in the above-captioned action to date.

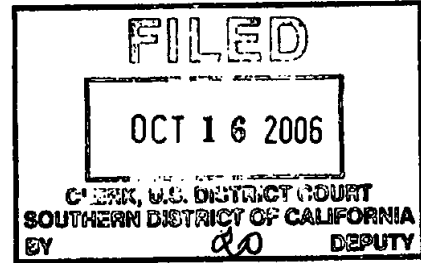
IT IS SO ORDERED.

Dated: July 30, 2007

Barry Ted Moskowitz
The Honorable Barry Ted Moskowitz
United States District Court Judge

1 JOHN ALLCOCK (Cal. Bar No. 098895)
2 ARTHUR A. WELLMAN (Cal. Bar No. 178309)
3 MICHAEL HAN (Cal. Bar No. 229714)
4 DLA PIPER US LLP
5 401 B Street, Suite 1700
6 San Diego, CA 92101-4297
7 Tel: 619.699.2700
8 Fax: 619.699.2701

9 Attorneys for Plaintiffs
10 THOMSON INSTRUMENT CO.; and
11 SCIENTIFIC PLASTIC PRODUCTS, INC.



12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 THOMSON INSTRUMENT CO., a
15 Nevada corporation; and SCIENTIFIC
16 PLASTIC PRODUCTS, INC., a California
17 corporation,

18 Plaintiffs,

19 v.

20 BIOTAGE AB, a Swedish corporation,

21 Defendant.

Case No: 06 CV 02305 LAB (BLM)

COMPLAINT FOR DECLARATORY
JUDGMENT; AND

DEMAND FOR JURY TRIAL

22 Plaintiffs THOMSON INSTRUMENT CO. ("Thomson") and SCIENTIFIC PLASTIC
23 PRODUCTS, INC. ("SPP") allege against BIOTAGE AB ("Biotage") as follows:
24
25
26
27
28

ORIGINAL

I.

NATURE OF THE ACTION

1. This civil action arises under the patent laws of the United States (codified at 35 U.S.C. § 101, *et seq.*) and the Federal Declaratory Judgments Act pursuant to 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between Plaintiffs and Biotage regarding the invalidity, unenforceability and non-infringement of United States Patents Nos. 6,294,087, 6,436,284 and 6,802,968.

II.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c) and (d), and 28 U.S.C. § 1400.

III.

THE PARTIES

4. Plaintiff Thomson is a Nevada corporation with a principal place of business in this Judicial District, located at 1121 South Cleveland Street, Oceanside, California.

5. Plaintiff SPP is a California corporation with a principal place of business in this Judicial District, located at 1121 South Cleveland Street, Oceanside, California.

6. On information and belief, Defendant Biotage is a Swedish "aktiebolag" with a principal place of business at Kungsgatan 76, SE-753 18 Uppsala, Sweden.

7. On information and belief, on October 12, 2006, Biotage held a Microwave Symposium at the Douglas F. Manchester Executive Conference Center, located on the campus of the University of San Diego, 5998 Alcala Park, San Diego, California 92110 (the "San Diego Microwave Symposium").

8. The title of the San Diego Microwave Symposium was "Microwave Synthesis and Other New Drug Discovery Technologies." A true and correct copy of some postings for the Microwave Symposium on Biotage's website are attached hereto as Exhibit A, pages 1-3.

9. Biotage made a registration form for the San Diego Microwave Symposium available on its website. A true and correct copy of the registration form for the Microwave Symposium on Biotage's website is attached hereto as Exhibit A, page 4.

10. On information and belief, Biotage has two sales representatives in this Judicial District and sells and ships products to customers in this Judicial District.

IV.

GENERAL ALLEGATIONS

11. Thomson and SPP reallege paragraphs 1 through 10.

A. U.S. Patent No. 6,294,087

12. United States Patent No. 6,294,087 is entitled "CHROMATOGRAPHY COLUMN" (the "'087 patent"). A true and correct copy of the '087 patent is attached hereto as Exhibit B, pages 12-18.

13. Biotage has alleged that "Biotage is the true and sole owner of the '087 patent."

B. The SINGLE StEP™ Columns

14. SPP manufactures a chromatography column which is sold as the SINGLE StEP™ chromatography column, and sells those columns to Thomson.

15. Thomson purchases SINGLE StEP™ columns from SPP and sells those columns to various companies in this Judicial District and elsewhere.

C. The Virginia Action

16. Biotage has filed a "Complaint for Patent Infringement, Trademark Infringement and Unfair Competition" in the United States District Court for the Eastern District of Virginia (the "Virginia Action"). A true and correct copy of that complaint, including the exhibits, is attached hereto as Exhibit B.

17. In the Virginia Action, Biotage has alleged that Thomson has "infringed the '087 patent by the making, using and/or selling of certain chromatography columns."

///

///

///

D. U.S. Patent No. 6,436,284

18. United States Patent No. 6,436,284 is entitled "CHROMATOGRAPHY APPARATUS" (the "'284 patent"). A true and correct copy of the '284 patent is attached hereto as Exhibit C.

19. Biotage has contended that "Biotage owns" the '284 patent.

20. Biotage has contended that the '284 patent is "directed to chromatography columns having a recessed inflow region for receiving a solid-support sample."

E. U.S. Patent No. 6,802,968

21. United States Patent No. 6,802,968 is entitled "CHROMATOGRAPHY APPARATUS" (the "'968 patent"). A true and correct copy of the '968 patent is attached hereto as Exhibit D.

22. Biotage has contended that "Biotage owns" the '968 patent.

23. Biotage has contended that the '968 patent is "directed to chromatography columns having a recessed inflow region for receiving a solid-support sample."

F. Accusations of Infringement

24. Biotage has alleged that the manufacture, use, and sale of the SINGLE StEP™ chromatography columns are acts of infringement of the '087 patent.

25. Biotage requested information on what entity "manufactured" the SINGLE StEP™ columns for Thomson, and stated it was aware of and believed that SPP manufactured the columns.

26. Biotage has suggested that it may add SPP to the Virginia Action as a defendant, based upon SPP's manufacture of SINGLE StEP™ columns.

27. Biotage has stated: "Our initial analysis indicates that the SingleStep® columns are covered by the claims of [the '284 patent and the '968 patent]. Accordingly, we may be amending our complaint [in the Virginia Action] to include additional counts for infringement of one or more claims of U.S. Patent Nos. 6,436,284 and 6,802,968."

///

///

1 28. Accordingly, SPP has a reasonable apprehension of an impending suit against it
2 and/or against its customers for patent infringement, contributory infringement, or inducement of
3 infringement of the '087 patent.

4 29. Accordingly, Thomson and SPP have a reasonable apprehension of impending
5 claims against them and/or against their customers for patent infringement, contributory
6 infringement, or inducement of infringement of the '284 patent and the '968 patent.

7 **G. Thomson and SPP's Beliefs**

8 30. SPP and Thomson deny that they infringe the '087 patent, the '284 patent, or the
9 '968 patent (collectively the "Asserted Patents").

10 31. SPP and Thomson also state that the Asserted Patents are invalid.

11 32. SPP and Thomson also state that the '284 patent and the '968 patent are
12 unenforceable.

13 33. SPP and Thomson request a judicial determination and declaration of the
14 respective rights and duties of the parties based on the disputes recited in paragraphs 11-31 above.
15 Such a determination and declaration are necessary and appropriate at this time so the parties may
16 ascertain their respective rights and duties regarding the non-infringement, unenforceability, and
17 invalidity of the Asserted Patents.

18 34. Biotage's acts have created an actual, justifiable controversy between the parties
19 regarding the invalidity, enforceability, and non-infringement by SPP and Thomson of the
20 Asserted Patents.

21 **V.**

22 **FIRST CLAIM FOR RELIEF**

23 **(DECLARATION OF NON-INFRINGEMENT OF '087 PATENT)**

24 35. Thomson and SPP reallege paragraphs 1 through 33.

25 36. Thomson and SPP have not infringed, are not now infringing, and have not
26 threatened to infringe the '087 patent.

27 37. Thomson and SPP have not contributed to the infringement, and are not now
28 contributing to the infringement of the '087 patent.

38. Thomson and SPP have not induced others to infringe, and are not now inducing others to infringe the '087 patent.

VI.

SECOND CLAIM FOR RELIEF

(DECLARATION OF INVALIDITY OF '087 PATENT)

39. Thomson and SPP reallege paragraphs 1 through 33.

40. Moreover, Thomson and SPP allege that each of the claims of the '087 patent is invalid for failing to comply with the conditions and requirements for patentability as set forth in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112 and/or 132. Specifically, but without limitation:

(a) the claimed invention of the '087 patent was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent;

(b) the claimed invention of the '087 patent was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States;

(c) the applicant himself did not invent the subject matter sought to be patented in the '087 patent;

(d) the subject matter sought to be patented in the '087 patent and the prior art are such that the subject matter as a whole claimed in the '087 patent was obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains; and

(e) the specification of the '087 patent fails to contain a written description of the invention, and/or the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and/or fails to set forth the best mode contemplated by the inventor of carrying out his invention.

///

VII.

THIRD CLAIM FOR RELIEF

(DECLARATION OF NON-INFRINGEMENT OF '284 PATENT)

41. Thomson and SPP reallege paragraphs 1 through 33.

42. Thomson and SPP have not infringed, are not now infringing, and have not threatened to infringe the '284 patent.

43. Thomson and SPP have not contributed to the infringement, and are not now contributing to the infringement of the '284 patent.

44. Thomson and SPP have not induced others to infringe, and are not now inducing others to infringe the '284 patent.

VIII.

FOURTH CLAIM FOR RELIEF

(DECLARATION OF INVALIDITY OF '284 PATENT)

45. Thomson and SPP reallege paragraphs 1 through 33.

46. Moreover, Thomson and SPP allege that each of the claims of the '284 patent is invalid for failing to comply with the conditions and requirements for patentability as set forth in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112 and/or 132. Specifically, but without limitation:

(a) the claimed invention of the '284 patent was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent;

(b) the claimed invention of the '284 patent was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States;

(c) the applicant himself did not invent the subject matter sought to be patented in the '284 patent;

(d) the subject matter sought to be patented in the '284 patent and the prior art are such that the subject matter as a whole claimed in the '284 patent was obvious at the time the

1 invention was made to a person having ordinary skill in the art to which said subject matter
2 pertains; and

3 (e) the specification of the '284 patent fails to contain a written description of
4 the invention, and/or the manner and process of making and using it, in such full, clear, concise,
5 and exact terms as to enable any person skilled in the art to which it pertains, or with which it is
6 most nearly connected, to make and use the same, and/or fails to set forth the best mode
7 contemplated by the inventor of carrying out his invention.

8 **IX.**

9 **FIFTH CLAIM FOR RELIEF**

10 **(DECLARATION OF NON-INFRINGEMENT OF '968 PATENT)**

11 47. Thomson and SPP reallege paragraphs 1 through 33.

12 48. Thomson and SPP have not infringed, are not now infringing, and have not
13 threatened to infringe the '968 patent.

14 49. Thomson and SPP have not contributed to the infringement, and are not now
15 contributing to the infringement of the '968 patent.

16 50. Thomson and SPP have not induced others to infringe, and are not now inducing
17 others to infringe the '968 patent.

18 **X.**

19 **SIXTH CLAIM FOR RELIEF**

20 **(DECLARATION OF INVALIDITY OF '968 PATENT)**

21 51. Thomson and SPP reallege paragraphs 1 through 33.

22 52. Moreover, Thomson and SPP allege that each of the claims of the '968 patent is
23 invalid for failing to comply with the conditions and requirements for patentability as set forth in
24 Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, 112
25 and/or 132. Specifically, but without limitation:

26 (a) the claimed invention of the '968 patent was known or used by others in
27 this country, or patented or described in a printed publication in this or a foreign country, before
28 the invention thereof by the applicant for patent;